

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

KENNETH BUTLER, SR.,

Plaintiff,

vs.

BALKAMP INC., et al.,

Defendants.

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) CIVIL ACTION NO:
) No. 1:12-cv-01716-SEB-DML
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DEFENDANTS' INITIAL MARKMAN BRIEF

Pursuant to Section III.N. of the Case Management Plan entered on May 31, 2013 (Doc. 20), defendants Balkamp Inc., National Automotive Parts Association, and Genuine Parts Company (collectively "Defendants") hereby submit their Initial *Markman* Brief for the U.S. Design Patent No. D500,646 ("the '646 patent") in suit.

I. INTRODUCTION

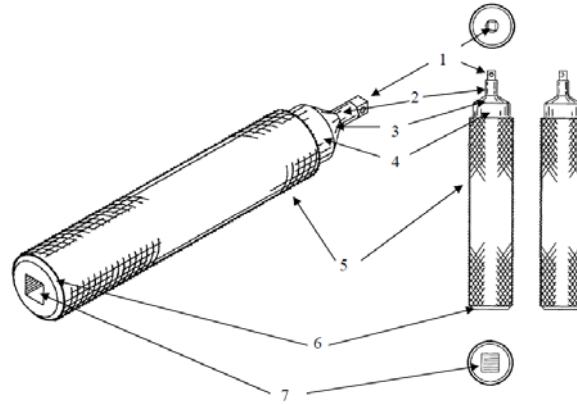
Plaintiff Kenneth Butler, Sr. ("Butler") alleges that the Defendants' Spinning Impact Extensions infringe his '646 patent. (Doc. 1). Defendants deny the Spinning Impact Extensions infringe any valid '646 patent. (Doc. 12). Because there are no material facts in dispute, Defendants have moved herewith for summary judgment pursuant to Fed. R. Civ. P. 56 on the grounds that there is no infringement and the '646 patent is invalid as anticipated (35 U.S.C. § 102) and obvious (35 U.S.C. § 103).

Interpretation of the '646 patent's claim is a matter solely for the Court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 391 (1996). This Court can rule on claim construction issues within the context of Defendants' summary judgment motion with or without a separate

Markman hearing. See, e.g., *Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358 (Fed. Cir. 2007) (affirming summary judgment entered without a *Markman* hearing); *Schoenhaus v. Jay*, 440 F.3d 1354, 1356 (Fed. Cir. 2006) (noting no separate *Markman* hearing was held, but affirming district court which construed claims “in a carefully-crafted summary judgment opinion). Thus, in *Fanimation, Inc. v. Dan’s Fan City, Inc.*, Case No. 1:08-cv-1071-TWP-WGH, 2010 U.S. Dist. LEXIS 134526 (S.D. Ind. Dec. 16, 2010) (Pratt, J.), *aff’d*, 444 F. App’x 449 (Fed. Cir. 2011) (per curium), this District Court decided *Markman* issues within the context of its summary judgment opinion finding noninfringement of two design patents without a separate *Markman* hearing. Defendants do not believe that a claim construction hearing is necessary and that the Court can reach a decision on claim construction issues on the papers. Should the Court decide to hold a claim construction hearing, Defendants do not anticipate calling any witnesses.

II. THE '646 PATENT

The U.S. Patent and Trademark Office (“USPTO”) granted the '646 patent on January 11, 2005. (Doc. 1 at Ex. A, p. 1 ('646 patent cover page). The patent contains seven figures, a cover page that includes a short description of each figure, and a single claim which recites “[t]he ornamental design for a tool handle, as shown and described.” *Id.* Figures 1 through 7 of the '646 patent set forth the limits of the claim. *Id.* None of the features are disclaimed (through the use of dashed lines). Rather, the many lines and hatching in the drawings—which are all claim limitations—depict various boundaries, shapes, and surface ornamentation. *In re Blum*, 54 C.C.P.A. 1231, 1233 (C.C.P.A. 1967). Five annotated '646 patent figures previously submitted in the parties’ Joint Claim Construction Statement (or “JCCS”) (Doc. 29) are reproduced below.



In their Joint Claim Construction Statement, the parties agreed that the '646 patent drawings disclose each of the following seven features:

Item	Description
1	Front (male) square drive or Front adaptor
2	Cylindrical extension shaft or Cylindrical front end portion
3	Tapered front end
4	Unknurled, reduced diameter front end or Untapered front end
5	Knurled handle or Knurled portion of the handle
6	Beveled or tapered back end
7	Rear (female) square drive or Square back adaptor

Doc. 29 (JCCS) at §§ B-C, pp. 2-3.

By law, the '646 patent does not protect functional elements of the tool handle shown in its figures. *Richardson v. Stanley Works, Inc.*, 597 F.3d 1288, 1293-94 (Fed. Cir. 2010); *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997). Instead, protection is limited to those elements which are shown in solid lines and which are not functional. *Contessa Food Prods. v. Conagra*, 282 F.3d 1370, 1378 (Fed. Cir. 2002); *Door-Master Corp. v. Yorktowne, Inc.*, 256 F.3d 1308, 1312 (Fed. Cir. 2001). The parties agree that the design depicted in the '646 patent includes some clearly functional elements, namely the front (male) square drive end, and the rear (female) square drive end (Items 1 and 7, above). The '646 patent claim must be construed so as to avoid inclusion of these forbidden elements. The parties agree

the remaining features 2 - 6 should be regarded as ornamental or primarily ornamental and part of the '646 patent design. *Id.*

III. SUMMARY OF CLAIM CONSTRUCTION ISSUES

The primary dispute is whether the Court should provide a detailed verbal construction for the sole claim in the '646 patent. Here, such a verbal construction is necessary under Federal Circuit Court of Appeals case precedent to appropriately distinguish the ornamental features of the claimed design from those that are uncontrovertedly primarily functional, *i.e.*, Items 1 & 7, above. In addition, a verbal construction is necessary under Federal Circuit precedent since the Court is being asked by Defendants to decide the invalidity of the '646 patent in their summary judgment motion.

Plaintiff's principal position on claim construction—"that no claim construction is necessary"—is insufficient since it is uncontroverted that the '646 patent discloses at least two primarily functional elements (Items 1 and 7, above) and invites the trier of fact to find substantial similarity based on the presence of common functional features. Plaintiff's fall-back position should the Court verbalize the ornamental features disclosed in the seven visual images of the '646 patent drawings, is a "proposed written construction" that is far too abstract and ignores the metes and bounds of the lined patent drawings.

IV. LAW OF PATENT CLAIM CONSTRUCTION FOR DESIGN PATENTS.

The Federal Circuit Court of Appeals has stated that "[d]etermining whether a design patent claim has been infringed requires, first, as with utility patents, that the claim be properly construed to determining its meaning and scope. Second, the claim as properly construed must be compared to the accused design to determine whether there has been infringement." *Elmer v. ICC Fabricating, Inc.*, 67 F.3d 1571, 1577 (Fed. Cir. 1995) (citations omitted). For the purposes

of its infringement analysis, it is “not required that [a] trial court attempt to provide a detailed verbal description of the claimed design, as is typically done in the case of utility patents” and “the preferable course ordinarily will be for a district court not to attempt to ‘construe’ a design patent claim by providing a detailed verbal description of the claimed design.” *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc). However, district courts do maintain the discretion to perform a verbal claim construction when it is called for under the circumstances. *Id.* at 679-680.¹

One situation where a construction is appropriate is when, as in the present case, the figures in a design patent include both functional and ornamental features. *Egyptian Goddess*, 543 F.3d at 680 (citing *OddzOn*, 122 F.3d at 1405) (“Where a claim design contains both functional and non-functional elements, the scope of the claim must be construed in order to identify the non-functional aspects of the design as shown in the patent.”); *Richardson*, 597 F.3d 1288, 1293 (Fed. Cir. 2010) (noting “there are a number of claim scope issues on which a court's guidance would be useful to the fact finder Among them, we specifically noted, is the distinction between the functional and ornamental aspects of a design”)

“A design patent only protects the novel, ornamental features of the patented design,” not the functional elements.” *OddzOn*, 122 F.3d at 1405. In *OddzOn*, the Federal Circuit Court of Appeals explained that “[w]here a design contains both functional and non-functional elements, the scope of the claim must be construed in order to identify the non-functional aspects of the design as shown in the patent.” *Id.* Moreover, the court explained that if a “design contains both functional and ornamental features, the patentee must show that the perceived similarity is based

¹ The Federal Circuit in *Egyptian Goddess* noted that a trial court’s “decision to issue a relatively detailed claim construction will not be reversible error” absent a showing of prejudice because “the level of detail to be used in describing the claimed design is a matter within the court’s discretion.” *Id.* at 679.

on the ornamental features of the design. The patentee ‘must establish that an ordinary person would be deceived by reason of the common features in the claimed and accused designs which are ornamental.’” *Id.* (determining that a verbal claim construction may be helpful if the drawings contain features that are not part of the patented design, such as functional features). The court pointed out that in construing the claim of the potentially infringed patent, the district court “carefully noted the ornamental features that produced the overall . . . appearance of the design.” The Federal Circuit Court of Appeals “agree[d] with the district court’s claim construction, which properly limit[ed] the scope of the patent to its overall ornamental visual impression, rather than to the broader general design concept . . .” *Id.*

A second situation warranting a verbal construction is when a district court is being asked to decide the invalidity of a design patent, as the Defendants have done here. Earlier this year, the Federal Circuit, in *High Point Design LLC v. Buyer’s Direct, Inc.*, 730 F.3d 1301, 108 U.S.P.Q.2d 1183 (Fed. Cir. 2013), confirmed it did not extend the more relaxed construction requirements of *Egyptian Goddess* when a court determines design patent invalidity. 108 U.S.P.Q.2d at 1193. Courts must still construe design patents when determining patent validity so that others can understand the reasoning behind their decisions. *Id.* In particular, in *High Point*, the Federal Circuit found that in finding the design patent in suit invalid on summary judgment, the district court “erred by failing to translate the design . . . into a verbal description.” 108 U.S.P.Q.2d at 1193. The Federal Circuit found the district court’s description of the design patent to be insufficient because it described the claimed design at “too high a level of abstraction.” *Id.* The Court instructed the district court to “add sufficient detail to its verbal description of the claimed design to evoke a visual image consonant with that design.” *Id.*

A third circumstance where additional verbal construction may be appropriate relates to

“the role of particular conventions in design patent drafting.” *Egyptian Goddess*, 543 F.3d at 680. There are several patent drafting conventions utilized in the '646 patent drawings. The drawings include various contour lines and hatching. As the name implies, contour lines are the lines of varying lengths that attempt to depict the contours and curved surfaces of the '646 patent tool handle, while the hatching depicts, for example, knurled surfaces. Different types of hatched lines depict different designs, and hatched lines must be read relative to each other. The use of such surface shading is described in MPEP § 1503.02 and can be used to describe surface contours or the character of a surface. In the '646 patent, parallel lines are used, for example, to indicate a flat surface or consistently curved surfaces at different locations. Cross hatching of an area, on the other hand, with intersecting sets of perpendicular or diagonal lines is meant to depict knurling along the cylindrical structure. In a design patent, the actual shape and arrangement of the knurling is considered to be part of the claimed design. The role of these particular conventions in the drafting of the '646 patent would be helpful to the trier of fact and may be described.

Thus, for its infringement analysis, this Court has discretion to offer a verbal description of the '646 patent, but it may instead rely on the actual illustrations set out in the patent instead. But for its invalidity analysis, the district court must include sufficient detail to a verbal description of the claimed design. Whatever the way the chooses to construed the '646 patent, in deciding the infringement and invalidity questions it must determine what are the visual ornamental or aesthetic aspects embodied in the '646 patent as a whole. *See OddzOn*, 122 F.3d at 1405 (finding district court “carefully noted the ornamental features that produced the overall ‘rocket-like’ appearance of the design”); *Arminak and Assocs., Inc. v. Saint-Gobain Calmar, Inc.*, 501 F.3d 1314, 1321 (Fed. Cir. 2007) (“The district court’s meticulous and accurate

description of [all figures] of each of [the] patents-in-suit did not constitute error . . . [and] demonstrated the proper consideration of the claimed designs as a whole.”); *Fanimation*, 2010 U.S. Dist. LEXIS 134526, at * 4 (“the proper construction of a design patent focuses on the overall visual impression of its ornamental, novel features.”). Plaintiff’s design can only be interpreted as covering the overall ornamental design disclosed, which includes the specific ornamental design characteristics or focal points described by Defendants below in Section V.D.

V. ‘646 PATENT CLAIM CONSTRUCTION

A. Plaintiff’s Proposed Construction Reads On the Prior Art

Patent claims ordinarily must be interpreted to uphold their validity, if possible. *See Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed. Cir. 1999) (alluding to the “familiar axiom that claims should be so construed, if possible, as to sustain their validity.”) (internal quotation marks omitted).² Prior art patents may be used as a guide to construe a patent claim. *See, e.g., Laryngeal Mask Co. v. Ambu A/S*, 618 F.3d 1367, 1372 (Fed. Cir. 2010) (construing the claim “[i]n light of the claims, specification, prosecution history, and prior art patents”); *Phillips v. AWH*, 514 F.3d 1303, 1317 (Fed. Cir. 2004) (prior art cited during examination of the patent is part of the prosecution history for purposes of claim construction); *Arthur A. Collins, Inc. v. Northern Telecom Ltd.*, 216 F.3d 1042 (Fed. Cir. 2000) (“Even when prior art is not cited in the written description or the prosecution history, it may assist in ascertaining the meaning of a term to a person skilled in the art”). In *Egyptian Goddess*, 543 F.3d at 678, the Federal Circuit provided some procedural guidance on how prior art may be used in the claim construction

² That “axiom is a qualified one, dependent upon the likelihood that a validity-preserving interpretation would be a permissible one.” *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1243 (Fed. Cir. 2003).

process in a design patent case.³ Here, the '646 patent is not a pioneer patent, but rather, exists in a mature and crowded field of art. The '646 patent claim had to be crafted to avoid the strictures of the crowded art, if possible. A claim in a crowded field necessarily must be given a narrow construction to be novel and non-obvious. *Egyptian Goddess*, 543 F. 3d at 670; *Fanimation*, 2010 U.S. Dist. LEXIS 134526, at *5-6.

There are many prior art references which are substantially similar to and read on Plaintiff's proposed construction of the '646 patent design which show the patented design is not very distinctive and exists in a mature and crowded field of art. In fact, as shown in the Tables included in **Exhibit A**, attached hereto, the construction which Plaintiff proposed on pages 8 to 9 of the Joint Claim Construction Statement (Doc. 29) is captured by at least each the following prior art references. (The references to the "Kemnitzer" and "Bowler" declarations, below, are to documents and patents filed herewith in support of Defendant's summary judgment motion).

1. U.S. Pat. No. 2,071,543, entitled "Revolving Grip Tool," filed September 14, 1935 and issued February 23, 1937 ("*Kress*").⁴
2. Williams M-110 Extension Handle, which is a commercial embodiment of *Kress*, publicly available as early as 1955 ("*M-110*").⁵
3. U.S. Pat. No. 3,650,165, entitled "Ratchet Tool," filed November 21, 1969 and issued March 21, 1972 ("*Wolfe*").⁶
4. U.S. Pat. No. 3,575,069, entitled "Ratchet and Speed Wrench Combination," filed July 29, 1969 and issued April 13, 1971 ("*White*").⁷
5. Snap-On® SG-6 ("SG-6"), which was described in a printed publication and on sale in this country since at least 1930.⁸

³ The Court, for example, noted that "[w]here there are many examples of similar prior art designs . . . differences between the claimed and accused designs that might not be noticeable in the abstract can become significant to the hypothetical ordinary observer who is conversant with the prior art." *Id.* at 678.

⁴ Issued fifty-eight years before April, 1995, *Kress* is prior art under § 102(a)-(b). Kemnitzer Decl. at ¶ 46 & Ex. 4.

⁵ Having been in public use and on sale in the U.S. forty years before April, 1995, the *M-110* is prior art under § 102(b). *Id.* at ¶ 48 & Ex. 5.

⁶ Issued over 23 years before April, 1995, *Wolfe* is prior art under § 102 (a)-(b). *Id.* at ¶ 53 & Ex. 6.

⁷ Issued twenty-four years before April, 1995, *White* is prior art under §102 (a)-(b). *Id.* at ¶ 71 & Ex. 7.

Plaintiff's proposed construction is crafted at such a high a level of abstraction that it reads on and is invalid in light of the prior art.

B. Plaintiff's Proposed Construction is too Abstract and Ignores the Metes and Bounds of What he Claimed in the '646 Patent

Plaintiff's proposed claim construction is unfaithful to and inconsistent with what is actually depicted visually in the '646 patent drawings. If the metes and bounds of the '646 patent claim did not reside in its seven lined drawings, then no one would understand how to avoid infringement, defeating the public notice of patent claims. *See Renishaw PLC v. Marposs Societa' Per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) (“[C]laims define the scope of the right to exclude[.]”); *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989) (“A claim in a patent provides the metes and bounds of the right which the patent confers on the patentee to exclude others from making, using, or selling the protected invention.”); *PSC Computer Prods., Inc. v. Foxconn Int'l, Inc.*, 355 F.3d 1353, 1359-60 (Fed. Cir. 2004) (“[O]ne of ordinary skill in the art should be able to read a patent, to discern which matter is disclosed . . . , and to recognize which matter has been claimed The ability to discern both what has been disclosed and what has been claimed is the essence of public notice. It tells the public which products or processes would infringe the patent and which would not.”). Defendants' submit that Plaintiff's proposed construction is a transparent attempt to be overly vague and unclear and try and force the claimed design to read on Defendants' accused product rather than to accurately and faithfully construe the '646 patent claim. Defendants disagree with Plaintiff's claim construction position for many reasons.

⁸ Having been in a published catalog and on sale in the U.S. sixty-five years before April, 1995, the Snap-On SG-6 is prior art under §102 (a)-(b). Sec. Kemnitzer Decl. at ¶ 58 & Ex. 9; Bowler Decl. at ¶¶ 18-19 & Exs. 12-13.

First, the '646 patent drawings do not disclose “an elongated central section with a partially-knurled exterior in its mid-portion,” as Plaintiff proposes. (Doc. 29, JCCS, at p. 8). Instead, the '646 patent drawings clearly disclose a main cylindrical body that is knurled along its entire length to the extension housing on the front (male) end, to the beveled, or chamfered, or tapered back end. While Plaintiff now wants to ignore how he claimed the knurling in the '646 patent drawings, the Patent Examiner formally objected to the initial drawings which Plaintiff submitted with his patent application, noting the many inconsistencies in his use of cross hatching for knurling, as follows:

5. The views are not cross hatched correctly. The cross hatching that is meant to depict knurling should appear along the outside edges of the handle. On cylindrical structures, the shading (or cross hatching in this case) should be darkest along the outside edges. If the shading or cross hatching is left out of any area, that area should be located along the center of the structure. The cross hatching is further object to because the lines are spaced much further apart in figures 3, 5, 6, and 7 than in figure 1. In a design patent, the actual shape and arrangement of the knurling is considered to be part of the claimed design. Consequently, the knurling must be disclosed in a consistent manner.

See Ex parte Quayle Action dated 10-20-2013, requesting Plaintiff to correct the formal objections to his patent drawings, a true and accurate copy of which is attached hereto as **Exhibit B** (at pp. 19-23 of the 46 page exhibit & Objection 5 at p. 21). The Examiner further objected to Plaintiff's initial drawings on the basis that all but one of his drawings showed knurling extending the entire length of the handle all the way to the inset area located on the front end (which Defendants refer to herein as the “extension housing”). *Id.* at p. 21 (Objection 2). In response to the Examiner's formal objections Office Action, Plaintiff corrected his patent drawings as they are shown in the issued '646 patent.

Second, the '646 patent drawings do not disclose “exposed cylindrical un-knurled portions at each end,” as Plaintiff proposes. (Doc. 29, JCCS at pp. 8-9). In fact, in the '646

patent drawings, there is no exposed, un-knurled portion at the back (female) end of the tool handle. Instead, the knurling extends all the way to the chamfered or tapered back end.

Third, the '646 patent drawings do not disclose “one end transitioning into a smaller diameter cylindrical portion which transitions into a square end with a recessed sphere in one surface,” as Plaintiff proposes. *Id.* at 9. Rather, the '646 patent drawings disclose a front (male) end that includes a distinctive, ornamental tapered section. The word “transition,” as used by Plaintiff, is far too abstract and unclear here. A “tapered” front end is what is actually shown in the '646 patent drawings. Indeed, in objecting to Plaintiff’s initial drawings, the Examiner formally objected to the inconsistencies in the “angle of the *taper*” shown in his patent drawings.

“4. The angle of the taper and the length of the shaft (D) in figures 3, 5, 6, and 7 are not consistent with figure 1.”

Exhibit B at p. 21 (Objection 4). The Examiner further objected noting that in Plaintiff’s original Figure 1, “the knurled structure extends to the *tapered right end*.” See *id.* at (Objection 2) (emphasis added).

Fourth, the '646 patent drawings do not disclose an “opposite (rear, female) end transitioning into a smaller diameter cylinder,” as Plaintiff suggests. Again, the word “transitioning,” as used by Plaintiff, is far too vague and abstract here. Instead, the '646 patent drawings clearly disclose a prominent and distinctive, ornamental chamfered or tapered back end. In fact, the Examiner referred to the rear (female) end as being “tapered” when objecting to Plaintiff’s initial drawings, as follows:

1. The inset area (A) *adjacent to the taper on the left end* of the handle in figures 3, 5, 6, and 8 is missing from figure 1.”

Exhibit B at p. 21 (Objection 4). (emphasis added).

For all of these reasons, Plaintiff's proposed written construction eviscerates the '646 patent claim limitations and is unfaithful to what he claimed as disclosed in the patent's seven figures.

C. Plaintiff's Proposed Verbal Construction Does Not Factor Out the '646 Patent's Functional Features.

Design patents have almost no scope because they are limited to what is depicted in the drawings. In *re Mann*, 861 F.2d 1581, 1582 (Fed. Cir. 1988). Further, a design patent only protects the novel, non-functional aspects of a claimed ornamental design. *OddzOn*, 122 F.3d at 1405. As the Federal Circuit explained in *OddzOn*, "[w]here a design contains both functional and non-functional elements, the scope of the claim must be construed in order to identify the non-functional aspects of the design as shown in the patent." *Id.* at 1405. The Federal Circuit reaffirmed this in *Egyptian Goddess*, noting that one option available to the court in construing the design claim is to distinguish "between those features of the claimed design that are ornamental and those that are purely functional." 543 F.3d at 680.

So too, here. The ornamental aspects of the design must be identified and distinguished from the function features. Not doing so risks an erroneous finding of substantial similarity between the claimed design and the accused products based upon functional features and those features common to all tool handles used with socket wrench sets.

In the Joint Claim Construction Statement, Plaintiff agreed that the front (male) and rear (female) square drive ends of the '646 patent claim design (Items 1 and 7, above) are functional. Specifically, Plaintiff stated therein that

The square portion on the very right end of the patent Figures 3, 5, 6 and 7 is functional as it is used to engage the square hole in a socket and thus must of necessity be square and have the appropriate dimension.

The square hole in the end as illustrated in Figures 1 and 2 of the patent is designed to accept a socket wrench handle and thus of necessity must be square and have the appropriate dimension.

Doc. 29 (JCCS) at 8. Accordingly, the front (male) and rear (female) square drives must be “factored out.” *Richardson*, 597 F.3d at 1293. Plaintiff’s proposed claim construction, however, does not factor out the square drive ends but expressly **includes** them, as follows: “The claimed ornamental design consists of . . . one end . . . [having] a square end . . . the opposite end . . . [having] a flat end with a square hole.” *Id.* at pp. 8-9. A proper verbal construction of the '646 patent claim is necessary to distinguish the aforementioned functional features from the ornamental features in the claimed design. A general description that merely refers to the design as it is shown the '646 patent drawings is insufficient and invites the trier of fact to find substantial similarity based on the presence of common functional features.

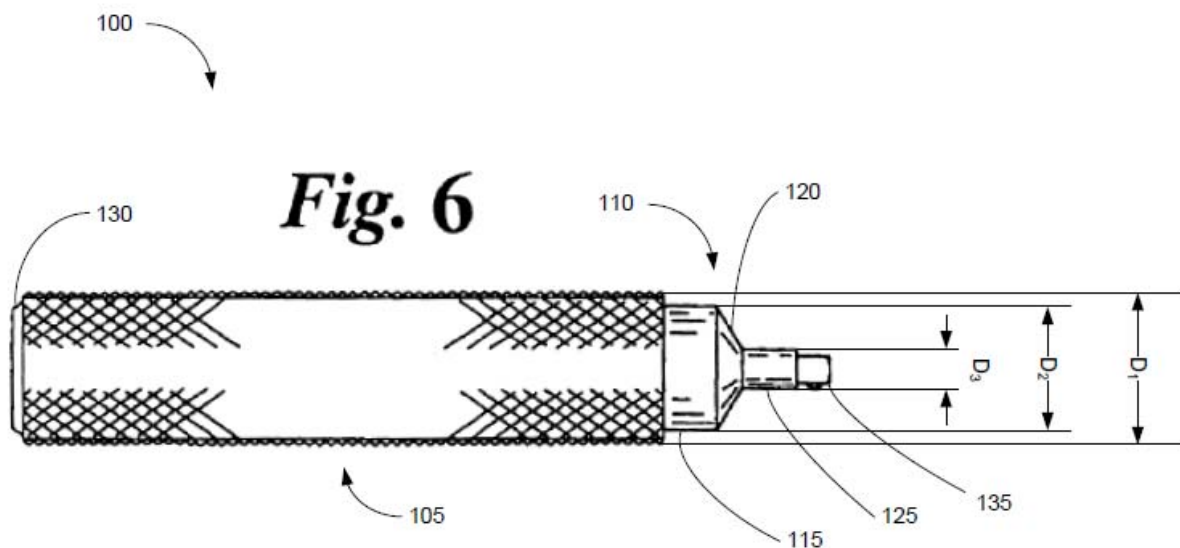
D. Defendants’ proposed construction recites the ornamental features of the claimed design and excludes the functional features.

Relying on the above principles and the Federal Circuit’s approval of the claim construction used in *OddsOn Prods.*, 122 F.3d at 1405 (the design concerned a football-shaped toy with a protruding tail shaft and fins), Defendants’ proposed construction is set forth below. The claim construction is not as much a detailed verbal description of the claimed design as it is delineating certain key ornamental focal point features of the overall claimed design, while describing the functional features excluded from the claimed design, and pointing to the figures in the '646 patent that depict those particular features.⁹ Defendants’ construction is not an exceptionally detailed verbal construction and the minimal level of detail included in the

⁹ Defendants’ slightly modified their proposed construction from the Joint Claim Construction Statement (Doc. 29) so as to appropriately distinguish the ornamental features from the functional features in the claimed design.

constructions will assist the trier of fact as it relates to consideration of the accused design and the prior art. *Egyptian Goddess*, 543 F.3d at 680; *High Point Design*, 108 U.S.P.Q.2d at 1193.

When the '646 patent is considered as a whole, the overall visual impression created by the '646 patent is limited to the design claimed in Figures 1 through 7 of the patent and includes everything shown in solid lines. This design includes the following features with reference to the patent drawings, shown below, for context¹⁰:



¹⁰ Defendants have reproduced herein Figures 2, 4, and 6 since they are representative of the seven patent drawings. Defendants have added the parenthetical references (*e.g.*, (100), (D1), etc.) to the patent figures for clarity and ease of reference to areas of the drawings.

Fig.2

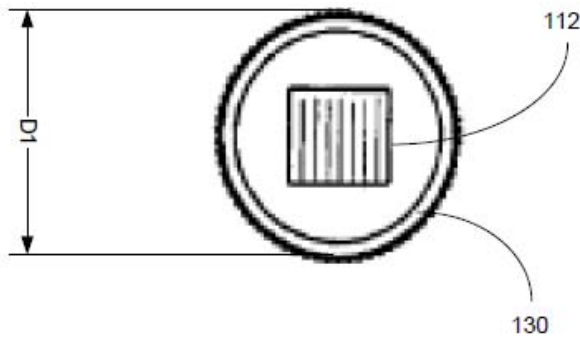
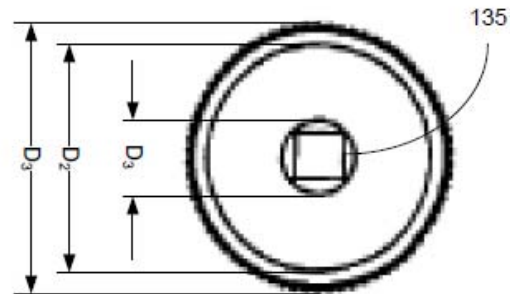


Fig.4



- The '646 Patent discloses a tool handle (100) [Figures 1, 3, 5, 6, and 7].
- The tool handle (100) has a large diameter (D1) main cylindrical body (105) and a smaller diameter (D2) extension housing (110) [Figures 1, 3, 5, 6, and 7].
- The main cylindrical body (105) has a blunt end with an unprotected functional female square drive (112) (Figure 2) on the left end and the extension housing (110) on the right end [Figures 1, 3, 5, 6, and 7].
- The main cylindrical body (105) is knurled along its entire length [Figures 1, 3, 5, 6, and 7] and includes a chamfered (or symmetrical sloping) edge (130) on its left end [Figures 1, 2, 3, 5, 6, and 7].
- The extension housing (110) includes a reduced diameter cylindrical portion (115), a tapered portion (120), and a short extension (125) with an unprotected functional male square drive (135) (Figures 1, 3, 4, 5, 6, and 7).
- The tapered portion (120) reduces in diameter from the diameter (D2) of the reduced diameter cylindrical portion (115) on the left end to the diameter (D3) of the

short extension (125) on the right end (Figures 1, 3, 5, 6, and 7).

- The extension housing (110) is unknurled (Figures 1, 3, 5, 6, and 7).

Defendants' proposed construction, above, captures the ornamental focal point features of the '646 patent claim while excluding the functional features.

VI. CONCLUSION

For all the foregoing reasons, the Court should adopt the Defendants' proposed claim construction for the '646 patent. Defendants' proposed construction does not rely on an overly broad and abstract design concept or word games, and accurately reflects the '646 patent claim as informed by the patent's drawings.

Respectfully submitted this 31st day of December, 2013.



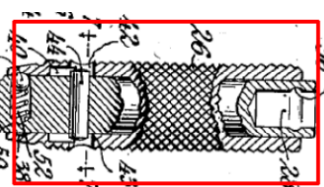





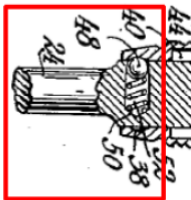



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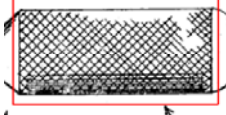
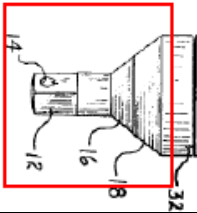
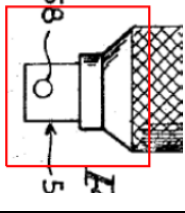
By: /s/ James W. Riley, Jr.
James W. Riley, Jr., Esq.
Indiana Bar # 6073-49
Riley Bennett & Egloff, LLP
141 East Washington Street, Fourth Floor
Indianapolis, Indiana 46204
Phone (317) 636-8000
Fax: (317) 955-2158
JRiley@rbelaw.com



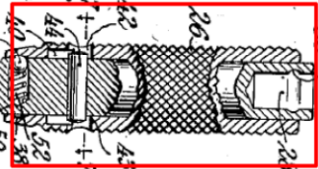






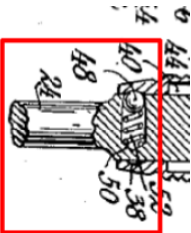
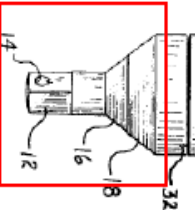
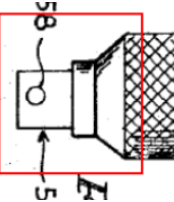
Attorneys For Defendants Balkamp Inc.,
National Automotive Parts Association, and
Genuine Parts Company

EXHIBIT A

<u>Plaintiff's Claim Construction</u>	Williams M-110	USPN 2,071,543 ("Kress")	USPN 3,650,165 ("Wolfe")	USPN 3,575,069 ("White")	Snap- On® SG-6
elongated cylindrical central section	✓	✓	✓	✓	✓
with a partially knurled exterior in its mid portion	✓	✓	✓	✓	✓
with exposed cylindrical un-knurled portions at each end,					✓
one end transitioning into a smaller diameter cylindrical portion which transitions into a square end with a recessed sphere in one surface,	✓	✓	✓	✓	✓
the opposite end transitioning into a smaller diameter cylinder	✓	✓			
which truncates into a flat end with a square hole.	✓	✓			✓

<u>Plaintiff's Claim Construction</u>	Snap-On® SG-6	Williams M-110	USPN 2,071,543 ("Kress")
elongated cylindrical central section			
with a partially knurled exterior in its mid portion			
with exposed cylindrical un-knurled portions at each end,			
one end transitioning into a smaller diameter cylindrical portion which transitions into a square end with a recessed sphere in one surface,			
the opposite end transitioning into a smaller diameter cylinder			
which truncates into a flat end with a square hole.			

<u>Plaintiff's Claim Construction</u>	USPN 3,650,165 ("Wolfe")	USPN 3,575,069 ("White")
elongated cylindrical central section		
with a partially knurled exterior in its mid portion		
with exposed cylindrical un-knurled portions at each end,		
one end transitioning into a smaller diameter cylindrical portion which transitions into a square end with a recessed sphere in one surface,		
the opposite end transitioning into a smaller diameter cylinder		
which truncates into a flat end with a square hole.		

<u>Plaintiff's Claim Construction</u>	Snap-On® SG-6	Williams M-110	USPN 2,071,543 ("Kress")	USPN 3,650,165 ("Wolfe")	USPN 3,575,069 ("White")
elongated cylindrical central section					
with a partially knurled exterior in its mid portion					
with exposed cylindrical un-knurled portions at each end,					
one end transitioning into a smaller diameter cylindrical portion which transitions into a square end with a recessed sphere in one surface,					




the opposite end transitioning into a smaller diameter cylinder					
which truncates into a flat end with a square hole.					

EXHIBIT B

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Southern District of Indiana on the following

☐ Trademarks or ☒ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 1:12-cv-01716-SEB-DML	DATE FILED 11/21/2012	U.S. DISTRICT COURT Southern District of Indiana
PLAINTIFF KENNETH BUTLER, SR., an individual		DEFENDANT BALKAMP INC., NATIONAL AUTO PARTS ASSOCIATION, GENUINE PARTS COMPANY CORP., TIEN-I INDUSTRIAL CORPORATION, et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 D500,646	1/11/2005	Kenneth Butler, Sr.
2		See Attached Copy of
3		Complaint
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK 	(BY) DEPUTY CLERK 	DATE 12/5/2012
--	---	-------------------

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail**

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (703) 746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

22474 7590 09/17/2004

DOUGHERTY, CLEMENTS & HOFER
1901 ROXBOROUGH ROAD
SUITE300
CHARLOTTE, NC 28211

11/09/2004 MAHME2 00000007 29182172

01 FC:2502 245.00 OP
 02 FC:8001 30.00 OP

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (703) 746-4000, on the date indicated below.

Kelly A. Thompson (Depositor's name)
 [Signature] (Signature)
 11-15-2004 (Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/182,172	05/21/2003	Kenneth Butler SR.	3751	3622

TITLE OF INVENTION: TOOL HANDLE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$240	\$0	\$240	12/17/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
HYDER, PHILIP S	2912	D08-082000

1. For printing on the patent front page, list (37 CFR 1.363):
☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47, Rev 03-02 or more recent) attached. Use of a Customer number is required.

2. For printing on the patent front page, list
 (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1. Dougherty, Clements,
 Hofer & Bernard
 2.
 3.

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 809. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

☒ Issue Fee
☐ Publication Fee (No small entity discount permitted)
☒ Advance Order - # of Copies 10

4b. Payment of Fee(s):

☐ A check in the amount of the fee(s) is enclosed.
☒ Payment by credit card. Form PTO-2038 is attached.
☐ The Director is hereby authorized to charge the required fee(s), or credit any overpayment, to Deposit Account Number 04-1448 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature

Ralph H. Dougherty
 Typed or printed name Ralph H. Dougherty

Date

11/05/2004

Registration No.

25,851

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

NOV 08 2004

U.S. PATENT & TRADEMARK OFFICE

PTO/SB/21 (08-00)

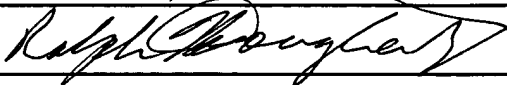
Approved for use through 10/31/2002. OMB 0651-0031

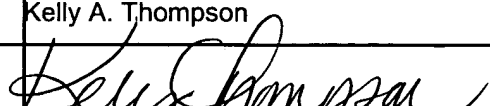
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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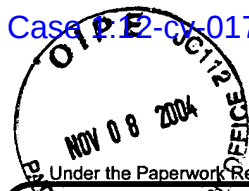
TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	29/182,172	
	Filing Date	05/21/2003	
	First Named Inventor	Kenneth Butler, Sr.	
	Group Art Unit	2912	
	Examiner Name	Philip S. Hyder	
Total Number of Pages in This Submission	4	Attorney Docket Number	3751

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Return Receipt Postcard Issue Fee Transmittal		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Ralph H. Dougherty DOUGHERTY, CLEMENTS & HOFER
Signature	
Date	11/05/2004

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date:			
			11/05/2004
Typed or printed name	Kelly A. Thompson		
Signature		Date	11/05/2004

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



PTO/SB/17 (10-04v2)

Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL

for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)**275.00****Complete if Known**

Application Number	29/182,172
Filing Date	05/21/2003
First Named Inventor	Kenneth Butler, Sr.
Examiner Name	Philip S. Hyder
Art Unit	2912
Attorney Docket No.	3751

METHOD OF PAYMENT (check all that apply)
☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None
☐ Deposit Account:Deposit Account Number
Deposit Account Name

04-1448

Dougherty & Clements, LLP

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$) 0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims -20** = X =
 Independent Claims -3** = X =
 Multiple Dependent =

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	88	2201	44	Independent claims in excess of 3	
1203	300	2203	150	Multiple dependent claim, if not paid	
1204	88	2204	44	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)					(\$) 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	\$245.00
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
Other fee (specify) 10 Soft Copies @ \$3.00					\$30.00
*Reduced by Basic Filing Fee Paid					
SUBTOTAL (3)					(\$) 275.00

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Ralph H. Dougherty	Registration No. (Attorney/Agent)	25,851	Telephone	704-366-6642
Signature		Date	11/05/2004		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
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NOTICE OF ALLOWANCE AND FEE(S) DUE

22474 7590 09/17/2004

DOUGHERTY, CLEMENTS & HOFER
 1901 ROXBOROUGH ROAD
 SUITE300
 CHARLOTTE, NC 28211

EXAMINER

HYDER, PHILIP S

ART UNIT

PAPER NUMBER

2912

DATE MAILED: 09/17/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/182,172	05/21/2003	Kenneth Butler SR.	3751	3622

TITLE OF INVENTION: TOOL HANDLE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$240	\$0	\$240	12/17/2004

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

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Complete and send this form, together with applicable fee(s), to: Mail

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (703) 746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

22474 7590 09/17/2004

DOUGHERTY, CLEMENTS & HOFER
 1901 ROXBOROUGH ROAD
 SUITE300
 CHARLOTTE, NC 28211

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (703) 746-4000, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/182,172	05/21/2003	Kenneth Butler SR.	3751	3622

TITLE OF INVENTION: TOOL HANDLE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$240	\$0	\$240	12/17/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
HYDER, PHILIP S	2912	D08-082000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/182,172	05/21/2003	Kenneth Butler SR.	3751	3622
22474	7590	09/17/2004		

DOUGHERTY, CLEMENTS & HOFER
 1901 ROXBOROUGH ROAD
 SUITE300
 CHARLOTTE, NC 28211

EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2912	

DATE MAILED: 09/17/2004

Determination of Patent Term Extension or Adjustment under 35 U.S.C. 154 (b)

Design patents have a term measured from the issue date of the patent and the term remains the same length regardless of the time that the application for the design patent was pending. Since the above-identified application is an application for a design patent, the patent is not eligible for Patent Term Extension or Adjustment under 35 U.S.C. 154(b).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/182,172	05/21/2003	Kenneth Butler SR.	3751	3622
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 SUITE300
 CHARLOTTE, NC 28211

EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2912	

DATE MAILED: 09/17/2004

Notice of Fee Increase on October 1, 2004

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2004, then the amount due will be higher than that set forth in the "Notice of Allowance and Fee(s) Due" because some fees will increase effective October 1, 2004. See Revision of Patent Fees for Fiscal Year 2005; Final Rule, 69 Fed. Reg. 52604, 52606 (May 10, 2004).

The current fee schedule is accessible from WEB site (<http://www.uspto.gov/main/howtofees.htm>).

If the fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due" but not the correct amount in view of the fee increase, a "Notice of Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice of Pay Balance of Issue Fee," if the response to the Notice of Allowance is to be filed on or after October 1, 2004 (or mailed with a certificate of mailing on or after October 1, 2004), the issue fee paid should be the fee that is required at the time the fee is paid. See Manual of Patent Examining Procedure (MPEP), Section 1306 (Eighth Edition, Rev. 2, May 2004). If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously-paid issue fee should be paid. See MPEP Section 1308.01.

Effective October 1, 2004, 37 CFR 1.18 is amended by revising paragraphs (a) through (c) to read as set forth below.

Section 1.18 Patent post allowance (including issue) fees.

- (a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
- By a small entity (Sec. 1.27(a))..... \$685.00
 - By other than a small entity..... \$1,370.00
- (b) Issue fee for issuing a design patent:
- By a small entity (Sec. 1.27(a))..... \$245.00
 - By other than a small entity..... \$490.00
- (c) Issue fee for issuing a plant patent:
- By a small entity (Sec. 1.27(a))..... \$330.00
 - By other than a small entity..... \$660.00

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability**Application No.**

29/182,172

Applicant(s)

BUTLER, KENNETH

Examiner

Philip S. Hyder

Art Unit

2912

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed Dec 24, 2003.
2. ☒ The allowed claim(s) is/are the ornamental design for a tool handle.
3. ☒ The drawings filed on 24 December 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Philip S. Hyder
Philip S. Hyder
Primary Examiner
Art Unit: 2912



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BIBDATASHEET**CONFIRMATION NO. 3622**

Bib Data Sheet

SERIAL NUMBER 29/182,172	FILING DATE 05/21/2003 RULE	CLASS D08	GROUP ART UNIT 2912	ATTORNEY DOCKET NO. 3751
-----------------------------	---------------------------------------	--------------	------------------------	--------------------------------

APPLICANTS

Kenneth Butler SR., Putnam, CT;

**** CONTINUING DATA *******

This application is a DIV of 08/421,220 04/13/1995 ABN

**** FOREIGN APPLICATIONS *******

IF REQUIRED, FOREIGN FILING LICENSE GRANTED ** SMALL ENTITY **

**** 06/30/2003**

Foreign Priority claimed <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	STATE OR COUNTRY CT	SHEETS DRAWING 3	TOTAL CLAIMS 1	INDEPENDENT CLAIMS 1
35 USC 119 (a-d) conditions met <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> Met after Allowance				
Verified and Acknowledged	Examiner's Signature <i>pt</i>	Initials		

ADDRESS

22474
 DOUGHERTY, CLEMENTS & HOFER
 1901 ROXBOROUGH ROAD
 SUITE300
 CHARLOTTE , NC
 28211

TITLE

Tool handle

FILING FEE RECEIVED 165	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees (Filing) <input type="checkbox"/> 1.17 Fees (Processing Ext. of time) <input type="checkbox"/> 1.18 Fees (Issue) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit
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Search Notes

Application No.

29/182,172

Examiner

Philip S. Hyder

Applicant(s)

BUTLER, KENNETH

Art Unit

2912

SEARCHED


Class	Subclass	Date	Examiner


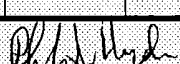
INTERFERENCE SEARCHED

Class	Subclass	Date	Examiner
D8	29 107	9/7/2004	PSH

**SEARCH NOTES
(INCLUDING SEARCH STRATEGY)**

	DATE	EXMR

Issue Classification 	Application No.	Applicant(s)	
	29/182,172	BUTLER, KENNETH	
	Examiner	Art Unit	
	Philip S. Hyder	2912	

ISSUE CLASSIFICATION									
ORIGINAL				CROSS REFERENCE(S)					
CLASS	SUBCLASS			CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)				
D8	29			D8	107				
INTERNATIONAL CLASSIFICATION									
			08/05						
			/						
			/						
			/						
			/						
 (Assistant Examiner) (Date)				 PHILIP S. HYDER PRIMARY EXAMINER GROUP 2900 (Primary Examiner) (Date)				Total Claims Allowed: 1	
J. SCOTT 9-16-04 (Legal Instruments Examiner) (Date)								O.G. Print Claim(s) 1	O.G. Print Fig. 1

<input type="checkbox"/> Claims renumbered in the same order as presented by applicant				<input type="checkbox"/> CPA				<input type="checkbox"/> T.D.				<input type="checkbox"/> R.1.47			
Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original		
	1		31		61		91		121		151		181		
	2		32		62		92		122		152		182		
	3		33		63		93		123		153		183		
	4		34		64		94		124		154		184		
	5		35		65		95		125		155		185		
	6		36		66		96		126		156		186		
	7		37		67		97		127		157		187		
	8		38		68		98		128		158		188		
	9		39		69		99		129		159		189		
	10		40		70		100		130		160		190		
	11		41		71		101		131		161		191		
	12		42		72		102		132		162		192		
	13		43		73		103		133		163		193		
	14		44		74		104		134		164		194		
	15		45		75		105		135		165		195		
	16		46		76		106		136		166		196		
	17		47		77		107		137		167		197		
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	26		56		86		116		146		176		206		
	27		57		87		117		147		177		207		
	28		58		88		118		148		178		208		
	29		59		89		119		149		179		209		
	30		60		90		120		150		180		210		

DESIGN ALLOWANCE HOT LIST

Appl. No. 29/182,172 Prepared by Joseph Scott
Examiner-TC 2912 - Hader Date 9-16-04

JACKET:

☒ YES ☐ NO Primary Examiner box complete.
☒ YES ☐ NO Locarno Classification supplied.

PTO-892/1449:

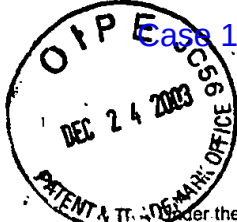
☒ YES ☐ NO Examiner's initials or cross-through lines supplied for each item cited by applicant.
☒ YES ☐ NO Date(s) supplied/complete on all PTO-1449/892 sheets. (Month and year required.)

SPEC:

☒ YES ☐ NO Brief Description of Drawings includes description of each figure in drawings.
☒ YES ☐ NO Continuing data is mentioned in 1st paragraph. (Can be an insert.)

TITLE:

☒ YES ☐ NO Title matches claim.



PTO/SB/21 (08-00)
Approved for use through 10/31/2002. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	29/182,172
	Filing Date	05/21/2003
	First Named Inventor	Kenneth Butler, Sr.
	Group Art Unit	2912
	Examiner Name	Philip S. Hyder
Total Number of Pages in This Submission	Attorney Docket Number	3751

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input checked="" type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		RECEIVED DEC 31 2003 TECH CENTER 1600/2900
Return Receipt Postcard		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Ralph H. Dougherty DOUGHERTY, CLEMENTS & HOFER
Signature	
Date	12/19/2003

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 12/19/2003			
Typed or printed name	Steven E. Smith		
Signature		Date	12/19/2003

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT OPERATIONS

Art Unit: 2912 (Examiner Philip S. Hyder)

Applicant: Kenneth Butler, SR.

Serial No: 29/182,172

Filed: May 21, 2003

Title: TOOL HANDLE

RECEIVED

DEC 31 2003

TECH CENTER 1600/2900

Charlotte, North Carolina
December 16, 2003

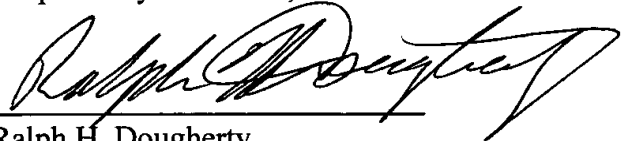
Hon. Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

SUBMISSION OF REPLACEMENT DRAWINGS

Responsive to the Official Action of October 20, 2003, Applicant submits the attached replacement drawings, correcting all noted informalities.

Respectfully submitted,



Ralph H. Dougherty
Attorney for Applicant
Registration No. 25,851
DOUGHERTY, CLEMENTS & HOFER
The Roxborough Building
1901 Roxborough Road; Suite 300
Charlotte, North Carolina 28211
Telephone (704) 366-6642

RHD/SES
Enclosures
Attorney's Docket 3751



Fig. 1

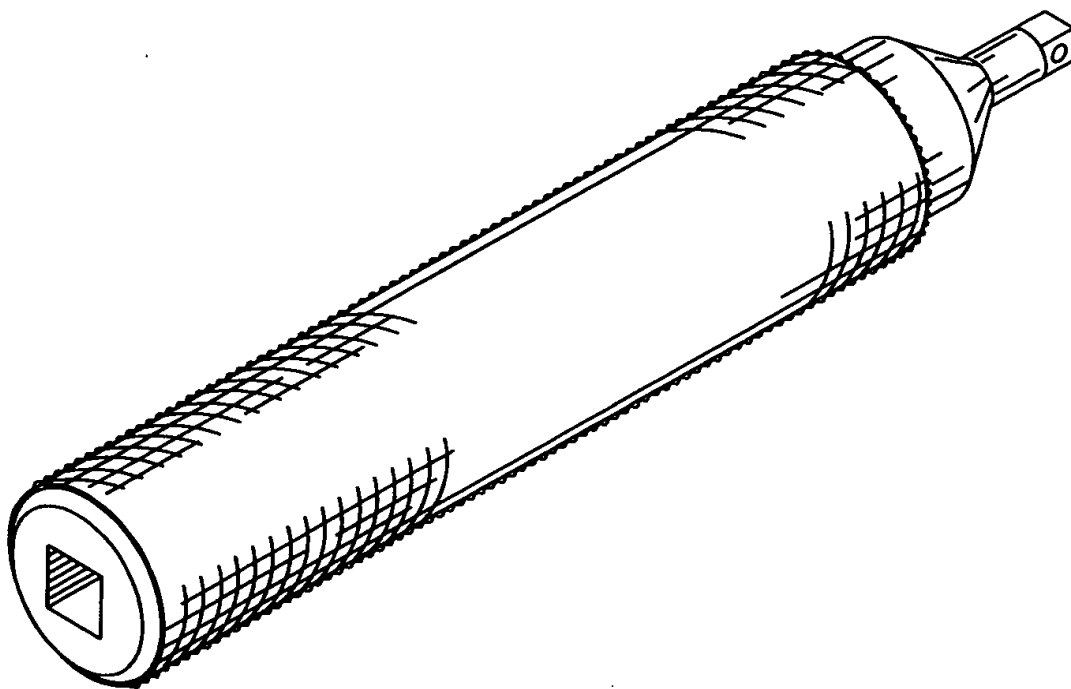




Fig. 2

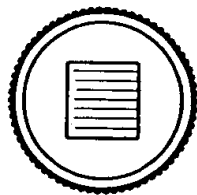


Fig. 3

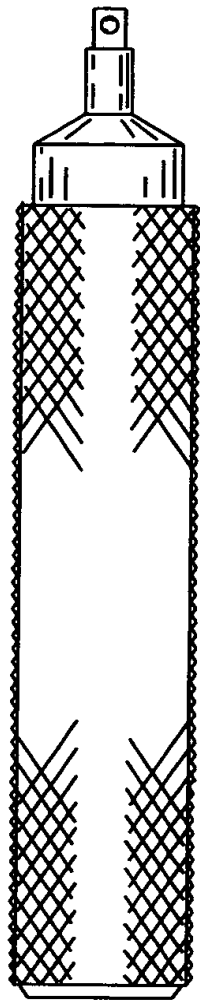


Fig. 4

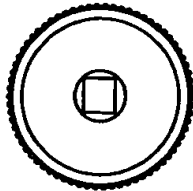
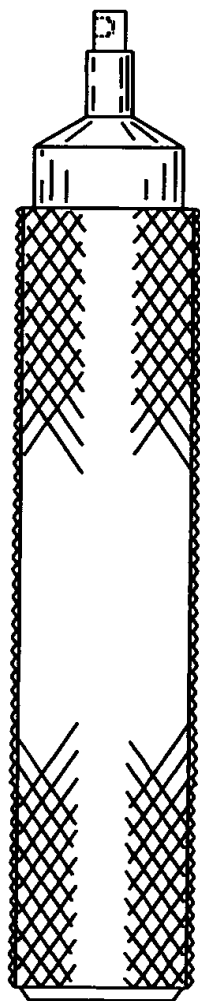


Fig. 5



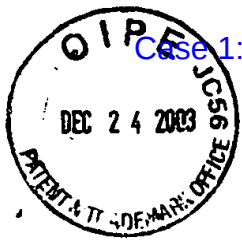


Fig. 6

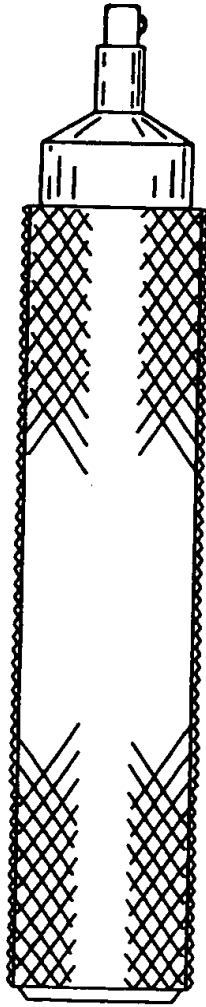
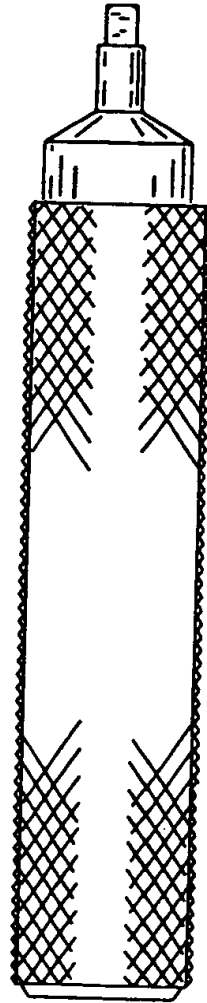


Fig. 7





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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/182,172	05/21/2003	Kenneth Butler SR.	3751	3622

22474 7590 10/20/2003

DOUGHERTY, CLEMENTS & HOFER
 1901 ROXBOROUGH ROAD
 SUITE300
 CHARLOTTE, NC 28211

EXAMINER

HYDER, PHILIP S

ART UNIT

PAPER NUMBER

2912

DATE MAILED: 10/20/2003

2

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

29/182,172

Applicant(s)

BUTLER, KENNETH

Examiner

Philip S. Hyder

Art Unit

2912

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) ____ is/~~are~~ pending in the application.
 ^ 4a) Of the above claim(s) ____ is/~~are~~ withdrawn from consideration.
- 5) ☒ Claim(s) ____ is/~~are~~ allowed.
- 6) ☐ Claim(s) ____ is/~~are~~ rejected.
- 7) ☐ Claim(s) ____ is/~~are~~ objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 May 2003 is/~~are~~: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☒ Other: *annotated drawings*.

Application/Control Number: 29/182,172

Page 2

Art Unit: 2912

DETAILED ACTION

Specification

No amendments are required.

Drawings

The drawings are objected to for the reasons set forth below:

1. The inset area (A) adjacent to the taper on the left end of the handle in figures 3, 5, 6, and 7 is missing from figure 1.
2. The area (B) to the right of the knurling in figures 3, 5, 6, and 7 is missing from figure 1. In figure 1 the knurled structure extends to the tapered right end.
3. While the rectangular drive end (C) is narrower than the cylindrical shaft in figures 3, 5, 6, and 7, it is the same width as the shaft in figure 1. Furthermore, the edges of the square drive look slightly rounded in figure 4 whereas they do not look rounded in the rest of the views.
4. The angle of the taper and the length of the shaft (D) in figures 3, 5, 6, and 7 are not consistent with figure 1.
5. The views are not cross hatched correctly. The cross hatching that is meant to depict knurling should appear along the outside edges of the handle. On cylindrical structures, the shading (or cross hatching in this case) should be darkest along the outside edges. If the shading or cross hatching is left out of any area, that area should be located along the center of the structure. The cross hatching is further objected to because the lines are spaced much further apart in figures 3, 5, 6, and 7 than in figure 1. In a design patent, the actual shape and arrangement of the knurling is considered to be part of the claimed design. Consequently, the knurling must be disclosed in a consistent manner.

Application/Control Number: 29/182,172
Art Unit: 2912

Page 3

When preparing new drawings in compliance with the requirement therefor, care must be exercised to avoid introduction of anything which could be construed to be new matter prohibited by 35 U.S.C. 132 and 37 CFR 1.121.

Since this is a continuation of application 08/421,220, said parent application must provide antecedent basis for all changes in this application. When the examiner reviewed the 08/421,220 he saw a view identical to figure 1. Accordingly, any changes corresponding to the perspective view are acceptable. The examiner did not note any views corresponding to the design in figures 3, 5, 6, and 7. Unless the examiner missed those views, the changes to the disclosure should not be based on those views.

Conclusion

The claim is allowable over the cited prior art.

This application is in condition for allowance except for the following formal matters: noted above.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire TWO MONTHS from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip S. Hyder whose telephone number is 703/305/3119. The examiner can normally be reached on Mon- Thurs. 6:30am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tedd Shooman can be reached on 703-305-3170. The fax phone numbers for the

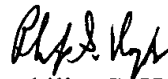
Application/Control Number: 29/182,172

Page 4

Art Unit: 2912

organization where this application or proceeding is assigned are 703-308-2742 for regular communications and 703-308-2742 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Philip S. Hyder
Primary Examiner
Art Unit 2912

psh
October 16, 2003

Notice of References Cited	Application/Control No. 29/182,172	Applicant(s)/Patent Under Reexamination BUTLER, KENNETH	
	Examiner Philip S. Hyder	Art Unit 2912	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
X	A	US-D307,703	05-1990	Tomasula, Ronald L.	D8/107
X	B	US-D319,562	09-1991	Ballard, Aaron B.	D8/29
X	C	US-D475,589	06-2003	Wilkinson, Kenneth C.	D8/29
X	D	US-5,033,337	07-1991	Thomas, III, David W.	81/177.2
X	E	US-5,680,800	10-1997	Sharpe, Jon B.	81/177.2
X	F	US-5,752,418	05-1998	Robins, Terry K.	81/177.2
X	G	US-5,813,296	09-1998	Hoff et al.	81/177.85
X	H	US-6,604,441	08-2003	Lin, Chorng-Jiang	81/177.2
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

05/21/03

USC990 U.S. PTO

5-22-3

12/31/13 17:05:13 AIDES

PTO/SB/18 (08-00)

Approved for use through 10/31/2002. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

DESIGN PATENT APPLICATION TRANSMITTAL

Attorney Docket No. 3751

First Named Inventor Kenneth Butler, Sr.

Title Tool Handle

Express Mail Label No. EV 332164635 US

(Only for new nonprovisional applications under 37 CFR 1.53(b))

ADDRESS TO:

Assistant Commissioner for Patents
Box Design
Washington, DC 20231

DESIGN V. UTILITY: A "design patent" protects an article's ornamental appearance (e.g., the way an article looks) (35 U.S.C. 171), while a "utility patent" protects the way an article is used and works (35 U.S.C. 101). The ornamental appearance of an article includes its shape/configuration or surface ornamentation upon the article, or both. Both a design and a utility patent may be obtained on an article if invention resides both in its ornamental appearance and its utility. For more information see MPEP 1502.01.

APPLICATION ELEMENTS

See MPEP chapter 1500 concerning design patent application contents.

1. ☒ Fee Transmittal Form (e.g., PTO/SB/17)
(Submit an original, and a duplicate for fee processing)
2. ☒ Applicant claims small entity status.
See 37 CFR 1.27.
3. ☒ Specification [Total Pages 2]
(preferred arrangement set forth below, MPEP 1503.01)
 - Preamble
 - Cross References to Related Applications
 - Statement Regarding Fed sponsored R & D
 - Description of the figure(s) of the drawings
 - Feature description
 - Claim (only one (1) claim permitted, MPEP 1503.03)
4. ☒ Drawing(s) (37 CFR 1.152) [Total Sheets 3]
5. Oath or Declaration [Total Pages 1]
 - a. ☐ Newly executed (original or copy)
 - b. ☒ Copy from a prior application (37 CFR 1.63 (d))
(for continuation/divisional with Box 16 completed)
 - i. ☐ **DELETION OF INVENTOR(S)**
Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b)
6. ☐ Application Data Sheet. See 37 CFR 1.76

ACCOMPANYING APPLICATION PARTS

7. ☐ Assignment Papers (cover sheet & document(s))
8. ☐ 37 CFR 3.73(b) Statement ☐ Power of Attorney
(when there is an assignee)
9. ☐ English Translation Document (if applicable)
10. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS Citations
11. ☐ Preliminary Amendment
12. ☒ Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
13. ☐ Certified Copy of Priority Document(s)
(if foreign priority is claimed)
14. ☐ Request for Expedited Examination of a Design Application (37 CFR 1.155)
(NOTE: Substitute "Box Expedited Design" for "Box Design" in the address indicated above.)
15. ☒ Other: 1 month ext. of time

16. If a **CONTINUING APPLICATION**, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:

☐ Continuation ☒ Divisional ☐ Continuation-in-part (CIP) of prior application No.: 08/421,220

Prior application information: Examiner James G. Smith

Group Art Unit: 3723

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

17. CORRESPONDENCE ADDRESS

☒ Customer Number or Bar Code Label 22474 (Insert Customer No. or Attach bar code label here) or ☐ Correspondence address below

Name	Ralph H. Dougherty				
Address	1901 Roxborough Road Suite 300				
City	Charlotte	State	N. C.	Zip Code	28211
Country	USA	Telephone	704-366-6642	Fax	704-366-9744

Name (Print/Type) Ralph H. Dougherty

Registration No. (Attorney/Agent)

25,851

Signature

Ralph H. Dougherty

Date

05/21/2003

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Design, Washington, DC 20231.

PTO/SB/17 (01-03)

Approved for use through 04/30/2003. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 220.00)

Complete if Known

Application Number
Filing Date
First Named Inventor Kenneth Butler, Sr.
Examiner Name
Art Unit
Attorney Docket No. 3751

METHOD OF PAYMENT (check all that apply)☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None☐ Deposit Account:

Deposit Account Number 04-1448

Deposit Account Name Dougherty & Clements, LLP

The Commissioner is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) during the pendency of this application☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	\$165.00
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1)			(\$ 165.00)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
0	-20** = 0	X 0	= 0
Independent Claims	0	-3** = 0	X 0
Multiple Dependent	0	X 0	= 0

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1202 18	2202 9	Claims in excess of 20	
1201 84	2201 42	Independent claims in excess of 3	
1203 280	2203 140	Multiple dependent claim, if not paid	
1204 84	2204 42	** Reissue independent claims over original patent	
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)			(\$ 0)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for <i>ex parte</i> reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	55.00
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 55.00)

SUBMITTED BY

Name (Print/Type) Ralph H. Dougherty Registration No. 25,851 Telephone 704-366-6642
Signature *Ralph H. Dougherty* (Attorney/Agent) Date May 21, 2003

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Docket 3751

Certificate of Mailing by "Express Mail"

I, Teresa P. Loftin, do hereby certify that the foregoing or attached documents are being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, Alexandria, VA. 22313 on May 21, 2003.

Name: Teresa P. Loftin

Teresa P. Loftin

Express Mail Label No.: EV 332164635 US

May 21, 2003

Date of Deposit

EV332164635US

08/421,220, filed April 13, 1995

PATENT

SPECIFICATION

TOOL HANDLE

KENNETH BUTLER, SR.

CROSS-REFERENCE TO RELATED APPLICATION

This Application is a divisional of U.S. Utility Patent Application Serial Number 08/421,220, filed April 13, 1995.

PREAMBLE

Be it known that I, KENNETH BUTLER, SR., have invented a new, original, and ornamental design for a TOOL HANDLE, of which the following is a specification, reference being to the accompanying drawings, which form a part hereof.

DESCRIPTION OF THE FIGURES

Figure 1 is perspective view of a TOOL HANDLE, showing my new design;

Figure 2 is a left end view thereof;

Figure 3 is a front view thereof;

Figure 4 is a right end view thereof;

Figure 5 is a back view thereof;

Figure 6 is a rear view thereof; and

FIG. 7

Docket 3751

Figure 7 is a bottom view thereof.

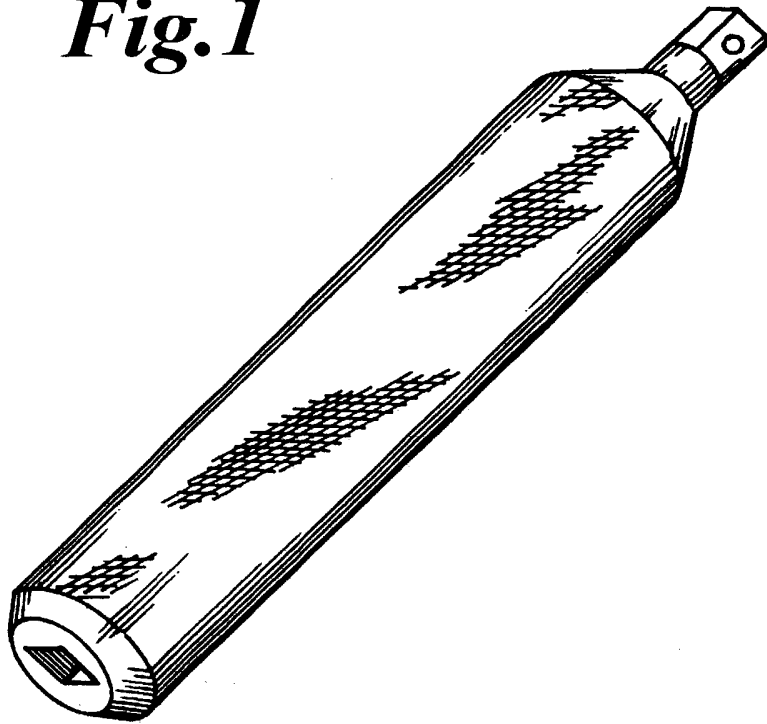
CLAIM

I claim:

The ornamental design for a TOOL HANDLE, as shown and described.

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Fig.1



20131022 10:52:10

Fig. 2

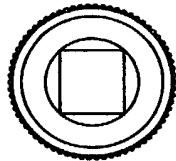


Fig. 3

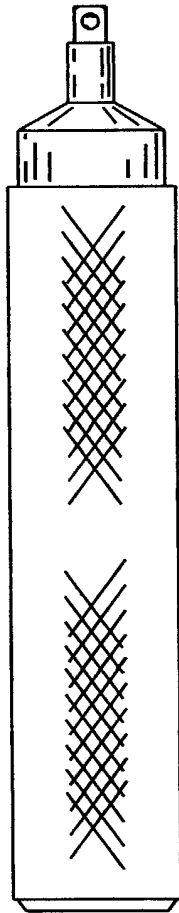


Fig. 4

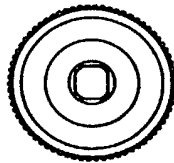
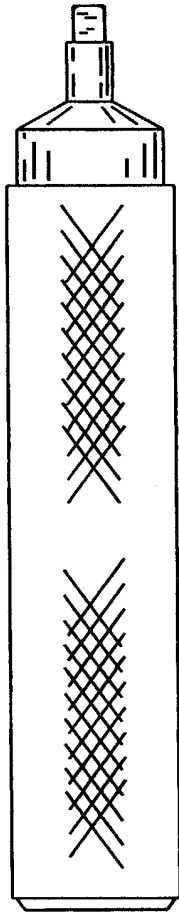


Fig. 5



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Fig. 6

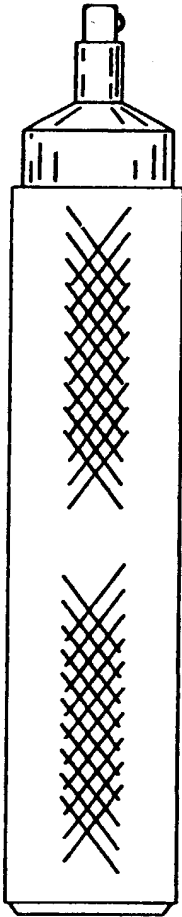
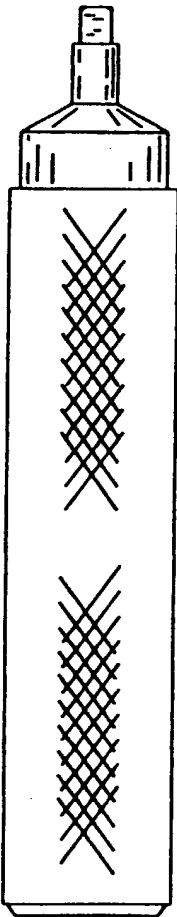


Fig. 7



2013 DEC 31 10:03

DECLARATION FOR PATENT APPLICATION

As the below-named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe that I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled

Tool Handle

the specification of which

☒ is attached hereto

☐ was filed on _____ as

Application Serial No. _____

and was amended on _____

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, 1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, 119 of any foreign application for patent or inventor's certificate listed below and have also identified below any foreign applications for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Applications None Priority Claimed

(number)	(Country)	(Day/Month/Year Filed)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

I hereby claim the benefit under Title 35, United States Code, 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

None

(Application Ser. No.)	(Filing Date)	(Status)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of Inventor Kenneth Butler, Sr.

Inventor's Signature and Date Kenneth Butler Sr. April 10/1995

Residence Box 23, Munyan Road, Putnam, CT 06260

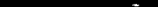
Citizenship United States

Post Office Address (same)

Subclass

Class

ISSUE CLASSIFICATION

Form PTO-450
(Rev. 7/92)

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CORPS CORR.		
SPEC. HAND		
FILE MAINT.		
DRAFTING		

SEARCHED			
Class	Sub.	Date	Exmr.
D8	14 29 82 83 107	10/16/03	PH
81	177.1 177.2 177.85 58.1 489 124.4	10/16/03	PH

SEARCH NOTES		
	Date	Exmr.
Craftsman Tools Catalog 2003 Examiner's Office	10/16/03	PH

15-911018 6/30/03

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INTERFERENCE SEARCHED			
Class	Sub.	Date	Exmr.

EMBODIMENTS FILED

PTO/SB/18 (08-00)

Approved for use through 10/31/2002. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**DESIGN
PATENT APPLICATION
TRANSMITTAL**

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No. 3751

First Named Inventor

Kenneth Butler, Sr.

Title Tool Handle

Express Mail Label No. EV 332164635 US

ADDRESS TO:

Assistant Commissioner for Patents
Box Design
Washington, DC 20231**DESIGN V. UTILITY:** A "design patent" protects an article's ornamental appearance (e.g., the way an article looks) (35 U.S.C. 171), while a "utility patent" protects the way an article is used and works (35 U.S.C. 101). The ornamental appearance of an article includes its shape/configuration or surface ornamentation upon the article, or both. Both a design and a utility patent may be obtained on an article if invention resides both in its ornamental appearance and its utility. For more information see MPEP 1502.01.**APPLICATION ELEMENTS**

See MPEP chapter 1500 concerning design patent application contents.

1. ☒ Fee Transmittal Form (e.g., PTO/SB/17)
(Submit an original, and a duplicate for fee processing)
2. ☒ Applicant claims small entity status.
See 37 CFR 1.27.
3. ☒ Specification [Total Pages 2]
(preferred arrangement set forth below, MPEP 1503.01)
 - Preamble
 - Cross References to Related Applications
 - Statement Regarding Fed sponsored R & D
 - Description of the figure(s) of the drawings
 - Feature description
 - Claim (only one (1) claim permitted, MPEP 1503.03)
4. ☒ Drawing(s) (37 CFR 1.152) [Total Sheets 3]
5. Oath or Declaration [Total Pages 1]
 - a. ☐ Newly executed (original or copy)
 - b. ☒ Copy from a prior application (37 CFR 1.63 (d))
(for continuation/divisional with Box 16 completed)
 - i. ☐ **DELETION OF INVENTOR(S)**
Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b)
6. ☐ Application Data Sheet. See 37 CFR 1.76

ACCOMPANYING APPLICATION PARTS

7. ☐ Assignment Papers (cover sheet & document(s))
8. ☐ 37 CFR 3.73(b) Statement (when there is an assignee) ☐ Power of Attorney
9. ☐ English Translation Document (if applicable)
10. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS Citations
11. ☐ Preliminary Amendment
12. ☒ Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
13. ☐ Certified Copy of Priority Document(s)
(if foreign priority is claimed)
14. ☐ Request for Expedited Examination of a Design Application (37 CFR 1.155)
(NOTE: Substitute "Box Expedited Design" for "Box Design" in the address indicated above.)
15. ☒ Other: 1 month ext. of time

16. If a **CONTINUING APPLICATION**, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:

☐ Continuation ☒ Divisional ☐ Continuation-in-part (CIP) of prior application No.: 08/421,220

Prior application information: Examiner James G. Smith Group Art Unit: 3723

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

17. CORRESPONDENCE ADDRESS

☒ Customer Number or Bar Code Label 22474 (Insert Customer No. or Attach bar code label here) or ☐ Correspondence address below

Name	Ralph H. Dougherty				
Address	1901 Roxborough Road				
	Suite 300				
City	Charlotte	State	N. C.	Zip Code	28211
Country	USA	Telephone	704-366-6642	Fax	704-366-9744

Name (Print/Type) Ralph H. Dougherty

Registration No. (Attorney/Agent)

25,851

Signature *Ralph H. Dougherty*

Date

05/21/2003

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Design, Washington, DC 20231.

PTO/SB/17 (01-03)

Approved for use through 04/30/2003. OMB 0651-0032

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**FEE TRANSMITTAL
for FY 2003**

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT**

(\$) 220.00

Complete if Known

Application Number

Filing Date

First Named Inventor

Kenneth Butler, Sr.

Examiner Name

Art Unit

Attorney Docket No.

3751

METHOD OF PAYMENT (check all that apply)☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None☐ Deposit Account:Deposit
Account
Number
Deposit
Account
Name

04-1448

Dougherty & Clements, LLP

The Commissioner is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) during the pendency of this application☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	\$165.00
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$) 165.00**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

Total Claims	Extra Claims	Fee from below	Fee Paid
0	-20** = 0	X 0	= 0
0	-3** = 0	X 0	= 0
0			= 0

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

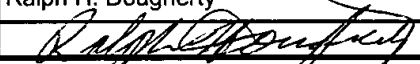
Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for <i>ex parte</i> reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	55.00
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 55.00**SUBMITTED BY**

(Complete if applicable)

Name (Print/Type)	Ralph H. Dougherty	Registration No. (Attorney/Agent)	25,851	Telephone	704-366-6642
Signature		Date	May 21, 2003		

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This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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Docket 3751

Certificate of Mailing by "Express Mail"

I, Teresa P. Loftin, do hereby certify that the foregoing or attached documents are being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, Alexandria, VA. 22313 on May 21, 2003.

Name: Teresa P. Loftin



Express Mail Label No.: EV 332164635 US

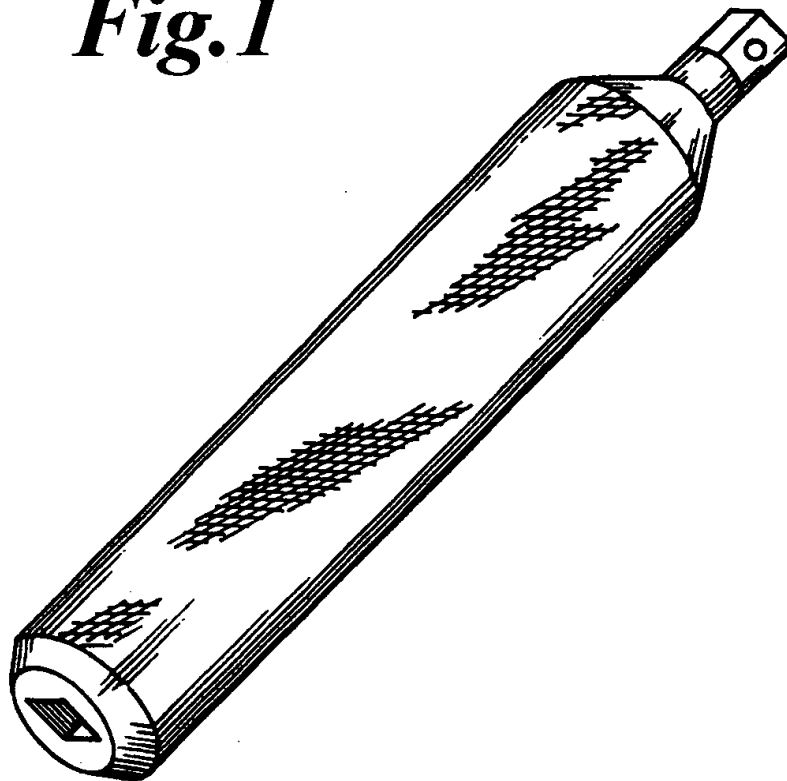
May 21, 2003

Date of Deposit

EV332164635US)

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Fig. 1



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Fig. 2

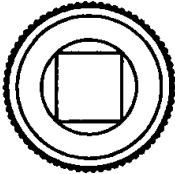


Fig. 3

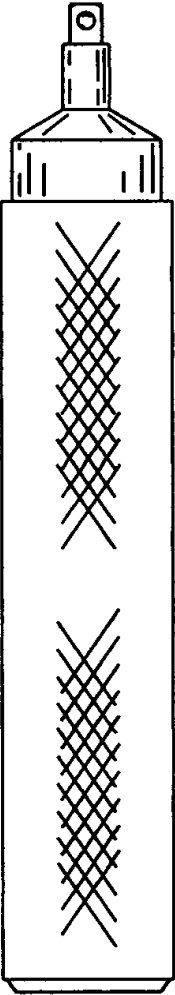


Fig 4

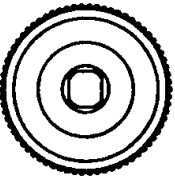
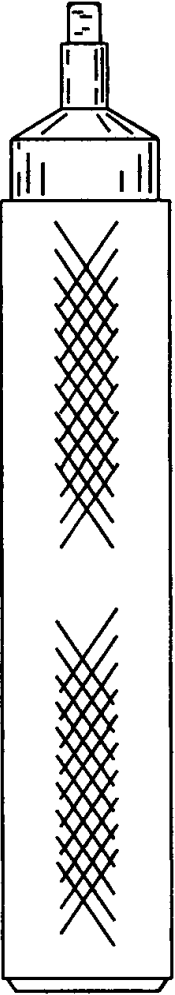


Fig. 5



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Fig. 6

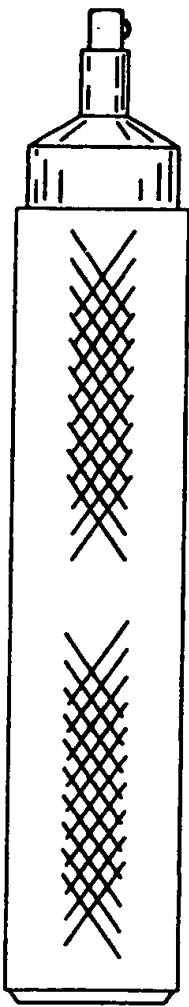
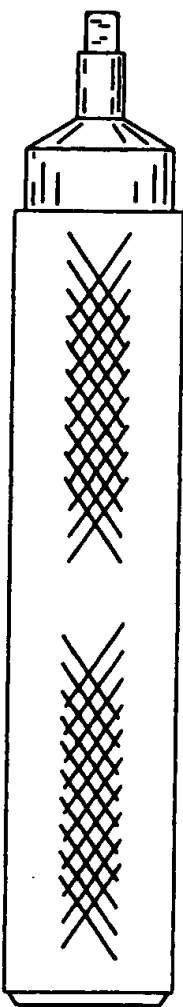


Fig. 7



PATENT

SPECIFICATION

TOOL HANDLE

KENNETH BUTLER, SR.

CROSS-REFERENCE TO RELATED APPLICATION

This Application is a divisional of U.S. Utility Patent Application Serial Number 08/421,220, filed April 13, 1995.

PREAMBLE

Be it known that I, KENNETH BUTLER, SR., have invented a new, original, and ornamental design for a TOOL HANDLE, of which the following is a specification, reference being to the accompanying drawings, which form a part hereof.

DESCRIPTION OF THE FIGURES

Figure 1 is perspective view of a TOOL HANDLE, showing my new design;

Figure 2 is a left end view thereof;

Figure 3 is a front view thereof;

Figure 4 is a right end view thereof;

Figure 5 is a back view thereof;

Figure 6 is a rear view thereof; and

Docket 3751

Figure 7 is a bottom view thereof.

CLAIM

I claim:

The ornamental design for a TOOL HANDLE, as shown and described.

BEST AVAILABLE COPY

DECLARATION FOR PATENT APPLICATION

As the below-named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe that I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled

Tool Handle
the specification of which

☒ is attached hereto
☐ was filed on _____ as
Application Serial No. _____
and was amended on _____

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, 1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, 119 of any foreign application for patent or inventor's certificate listed below and have also identified below any foreign applications for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Applications	None	Priority Claimed
(number)	(Country)	(Day/Month/Year Filed)

[] []
Yes No

I hereby claim the benefit under Title 35, United States Code, 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

(Application Ser. No.)	(Filing Date)	(Status)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of Inventor Kenneth Butler, Sr.
Inventor's Signature and Date Kenneth Butler, Sr. April 10 1995
Residence Box 23, Munyan Road, Putnam, CT 06260
Citizenship United States
Post Office Address (same)

PATENT APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

05/23/2003 HDEHESS1 00000013 29182172

01 FC:2002

165.00 OP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

KENNETH BUTLER, SR.,

Plaintiff,

vs.

BALKAMP INC.,
NATIONAL AUTOMOTIVE PARTS
ASSOCIATION, GENUINE PARTS
COMPANY, et al.,

Defendants.

No. 1:12-cv-01716-SEB-DML

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2013, I caused this *Defendants' Initial Markman Brief* to be filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record, including:

Joseph J. Zito, Esq. (jzito@dnlzito.com)
Benjamin C. Deming, Esq. (bdeming@dnlzito.com)

/s/ John M. Bowler
John M. Bowler